Single Bench (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO.4074 OF 2004

PETITIONER/ DEFENDANT NO.1	Rajshri Emporium through – Hundraj Ambawani, aged about 78 yrs, S/o Gagan Das Ambawani, R/o Main Road, Jagdalpur, Distt. Bastar [Chhattisgarh]

V E R S U S

RESPONDENTS PLAINTIFF	1. Udharam Moolchandani aged about 43 years S/o Dhanraj Moolchandani, R/o Motilal Nehru Ward, Jagdalpur, Distt. Bastar [Chhattisgarh]
RESPONDENT DEFENDANT NO.2	2. Jamil-ur-rahman Khan S/o Hazi Sardar Khan R/o Sardar Ward,Takur Road, Jagdalpur, Distt. Bastar [Chhattisgarh]
	3. First Civil Judge Class-I District Court, Jagdalpur (Bastar) CG.

P.R. No. 4028/04 Presented by Sh. Prateek Sahu dated 20/8/04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

The petitioner, named above, most respectfully begs to submit as under:

1. **PARTICULARS OF THE PETITIONER:**

As mentioned in the Cause title above.

(67)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक wp 4074/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	20-12-2004 Shri Sanjay K. Agrawal, counsel for the petitioner. The petitioner who is a tenant in a shop has preferred this writ petition being aggrieved by the order dated 3-7-2004 (Annexure-P/6) passed by the First Civil Judge Class-I in civil suit No.10-A/2003 whereby the learned Civil Judge after allowing the application of the petitioner herein, directed the petitioner to pay amount of rent Rs.9,000/- from January, 2002 to June, 2004 to the respondent No.1 herein. I have heard learned counsel for the petitioner on admission. Learned counsel for the petitioner argued that in his written statement the petitioner herein raised an objection that he is not a tenant of respondent No.1/plaintiff. He took the rented premises in question on rent from respondent No.2, therefore, the respondent No.1 is not entitled for the rent and based on that the trial Court framed issue Nos. 1, 5 and 6. Therefore, in view of these issues the trial Court ought not to have directed for payment of arrears of rent to the respondent No.1, rather the trial Court ought to have directed for depositing the rent and after deciding the issues, the Court ought to have passed the order for payment of rent to the concerned person in whose favour the Court decides that he is the landlord of the disputed rented premises.	

G.PRJ—FS/78 — 9/2000 —50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... -2- ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	I have perused the impugned order. The case of the respondent No.1, as averred in the plaint, was that on 3rd January 2002 he purchased the rented premises from defendant No.2/respondent No.2 herein under the registered sale deed. In para-6 of the plaint it was mentioned that defendant No.2 vide notice dated 11-1-2002 informed the defendant No.1/petitioner herein that hereinafter he should pay rent to the respondent No.1 herein from the month of January 2002 and for that purpose respondent No.1 also gave registered written notice to the petitioner herein through registered post on 15-3-2002, but even then the petitioner herein had not paid the rent, whereas, the case of the petitioner in his written statement was that it is denied that the respondent No.1 herein had purchased rented premises from respondent No.2 on 3-1-2002 and respondent No.2 herein had not given any notice to him on 11-1-02. Respondent No.1 had also not sent notice on 15-3-2002. However, respondent No.2 herein had filed his written statement (Annexure-P/3) in which he admitted the plaint of the respondent No.1 herein that he had sold the shop to him. Looking to the above plaint, written statement of the petitioner herein and respondent No.2 herein, the original landlord respondent No.2 herein to whom the petitioner admits his landlord and has stated that he took the premises on rent from respondent No.2 and respondent No.2 is not disputing that he has transferred his shop to the respondent No.1 herein, rather in his	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

written statement he has admitted that he has transferred the rented premises to the respondent No.1, therefore, in fact, as far as the question of receiving of the rent is concerned, there is no dispute about the entitlement of respondent No.1 to receive the rent. In view of the above facts, I do not find any substance in the arguments of learned counsel for the petitioner. In this connection, if we look into the provisions of sub-sections (3) & (4) of Section 13 of the Accommodation Control Act, 1961 which envisages that 'if, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under sub-section (1) or sub-section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.' Sub-section (4) envisages that 'if the Court is satisfied that any dispute referred to in sub-section (3) has been raised by a tenant for reasons which are false or frivolous, the Court may order the defence against eviction to be struck out and proceed with the hearing of the suit.'

As has been mentioned above, the case of respondent No.1 was that he purchased the rented premises from respondent No.2 vide registered sale deed dated 3-1-2002, notice of the same was sent to the petitioner herein by respondent No.1 on 15-3-2002, even respondent No.2 also sent a notice to the petitioner herein on 11-1-2002 and in the

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मामला क्रमांक..... **सन् 200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

written statement also respondent No.2 has admitted the case of respondent No.1 that he has transferred the rented premises to the petitioner, but even then the petitioner herein is claiming respondent No.2 as his landlord, therefore, in the circumstances, it cannot be said that bonafide dispute remains after pleadings of the parties that who is the person entitled to receive the rent.

As far as the case laws cited by learned counsel for the petitioner viz. **Manaram V. Omprakash and others** reported in **1990 JLJ 197** and **Nathulal Gupta V. Phattandas & another** reported in **1974 JLJ 434** are concerned, on the facts, these cases are not applicable to the present case.

In the result, I do not find any substance in this writ petition, same is liable to be dismissed and it is accordingly dismissed. However, it is made clear that the trial Court shall not be influenced by this order while passing the final judgment.

Sd/-
L.C. Bhadoo
Judge

Parve

23.12.09